STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 25, 2025)

MAURICE DOIRE and JOSHUA HOYE on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	
v.	:	**C.A. No. PC-2024-06059**
SYNAGRO WOONSOCKET, LLC, JACOBS ENGINEERING GROUP, INC., CITY OF WOONSOCKET, a municipality, and by and through Christine Chamberland, Interim Finance Director,	:	
***Defendants*.**	:	

DECISION

STERN, J. Before the Court are Defendant Synagro Woonsocket, LLC's motion to dismiss and motion to strike class allegations and Defendant Jacobs Engineering Group, Inc.'s motion to dismiss. Plaintiffs, Maurice Doire and Joshua Hoye on behalf of themselves and all others similarly situated, object.

I

Facts & Travel

This case involves claims of public nuisance, private nuisance, and negligence related to the alleged emission of noxious odors in the City of Woonsocket ("the City"). Defendant Synagro Woonsocket, LLC ("Synagro") is a limited liability company formed under the laws of Rhode Island. (Compl. ¶ 5.) Defendant Synagro operates the City's sewage sludge incinerator ("Incinerator") located at 15 Cumberland Hill Road in Woonsocket. *Id.* Defendant Jacobs

Engineering Group, Inc. ("Jacobs") is a corporation organized under the laws of Delaware with its headquarters located in Texas. *Id.* ¶ 6. Plaintiffs allege that Defendant Jacobs operates and maintains the Woonsocket Wastewater Treatment Plant ("WWTP") located at 11 Cumberland Hill Road in Woonsocket. *Id.* These two facilities form one sewage treatment facility ("Facility") for the City's sewer system. *Id.* ¶ 8.

Plaintiffs allege that this Facility has been the cause of noxious odors emanating throughout the community. *Id.* ¶¶ 1-2. Both representative Plaintiffs reside in residential properties within one mile of the Facility. *Id.* ¶ 41. Plaintiff Maurice Doire owns and resides at a residential property located at 17 Briens Court in Woonsocket. *Id.* ¶ 3. Plaintiff Joshua Hoye rents, resides in, and intends to remain at 132 Cass Avenue in Woonsocket. *Id.* ¶ 4.

Defendants Synagro and Jacobs operate and maintain a two-part sewage processing plant that receives, stores, treats, processes, and disposes of sewage waste from the City. *Id.* ¶ 45. Defendant Jacobs' WWTP is responsible for sending approximately fourteen tons of processed sewage sludge per day to Defendant Synagro's Incinerator. *Id.* ¶ 46. This sludge is dried by Defendant Jacobs before being turned into "cakes" by Defendant Synagro to be burned and disposed of in its Incinerator. *Id.* ¶ 47. Defendant Jacobs processes waste water from towns across Rhode Island and Massachusetts. *Id.* ¶ 48. Defendant Synagro also receives liquid and "cake" forms of sewage waste from two dozen municipalities across multiple states. *Id.* ¶ 49. Plaintiffs allege Defendant Jacobs is responsible for delivering all sludge to the appropriate holding tank or gravity thickener and coordinating with Defendant Synagro to manage the sludge handling and drying facilities. *Id.* ¶ 52.

Plaintiffs assert that the operation of this Facility creates odors that, if not properly operated, controlled, maintained, handled, and treated, escape into the community. *Id.* ¶¶ 56-57.

Plaintiffs argue these odors may be abated with reasonable care and diligence such as proper odor control plans, strategies, and methodologies. *Id.* ¶ 58. Plaintiffs allege that Defendants are required by their permit with the City to, among other things, utilize adequate odor mitigation and control technologies, adequately operate and maintain such technologies, adequately and/or timely dispose of waste, wastewater, and sludge produced through the Facility's processes, and ensure the Facility has the capacity to receive, store, and handle all waste it processes. *Id.* ¶¶ 60, 69. Despite these requirements, Plaintiffs allege the Defendants have unreasonably emitted noxious odors into the adjacent residential neighborhood beyond the Facility's property boundary. *Id.* ¶¶ 61-62. Plaintiffs state their properties have been invaded on occasions too numerous to list individually by noxious odors emanating from the Defendants' Facility. *Id.* ¶ 61. Doire reports that "[o]ur whole neighborhood smells like an open cesspool or at times like chemicals in the air" as a result of the Defendants' Facility's emissions, and that when odors are present "[w]e cannot enjoy our home." *Id.* ¶ 66. Hoye reports that "[t]he odors that are smelled on a daily basis smell like I live across from a large city dump on a 90-degree day" because of the Defendants' odor emissions. *Id.* ¶ 67. Hoye adds that "[o]n a daily basis from around 9 am – 11 am & 7 pm – 3 am, the smell is so bad that you cannot have your windows open to enjoy fresh air, even with brand new windows being closed you still cannot breathe fresh air[,]" continuing that he "cannot walk outside [without] wanting to throw up." *Id.*

Plaintiffs add that over ninety households within a one-mile radius of the Facility contacted Plaintiffs' counsel to report and document noxious odors they attribute to the Defendants' Facility. *Id.* ¶ 65. Plaintiffs cite a history of complaints regarding the Defendants' Facility. *Id.* ¶ 69. These include complaints filed by local residents with the City regarding the smells emanating from the Facility on May 15 and 16, 2022. *Id.* Plaintiffs also point to comments made during community

meetings before the Woonsocket City Council and numerous media reports documenting the experiences of local residents, including one in which a Woonsocket City Councilor stated, "[h]ow do you turn a city around that has such a poor smell attached to it? And when people come to our city, it smells bad." *Id.*

Plaintiffs next allege the Defendants knew or should have known of the existence of an odor issue at their Facility following a report performed by Bowker and Associates for the City in 2019. *Id.* This report highlighted that Defendant Synagro should have been capable of ninety percent odor reducing efficiency but was only operating at fifty to sixty percent. *Id.* This report also documented seal openings in the gravity thickener allowing odor to escape, faulty ductwork, extensive periods of time during which bay doors were open, inadequate procedures for offloading sludge from delivery trucks and for trucks hauling waste off-site, and for lack of proper coverings over the centrate pump station. *Id.*

Plaintiffs allege the Defendants have received numerous Notices of Non-compliance from the Rhode Island Department of Environmental Management ("RIDEM") for exceedances of its permit limitations, including multiple violations documented during inspections on June 6, June 7, June 8, June 10, and June 13, 2022. *Id.* These violations included, but were not limited to, multiple numeric effluent violations, numerous improper operation and maintenance violations, and numerous management practice violations. *Id.* On June 17, 2022, RIDEM issued a Notice of Non-compliance for odors extending beyond the property line. *Id.* The Facility also received a complaint filed by the United States Environmental Protection Agency ("USEPA") on December 13, 2021 for violations of the Clean Air Act. *Id.* The State of Rhode Island filed a complaint against the Facility for repeated violations on March 15, 2023, including but not limited to the discharges of partially treated sewage into the Blackstone River. *Id.*

Plaintiffs seek class certification, preliminarily defining the class as "[a]ll owner-occupants and renters of residential property located within one (1.0) mile of the Defendant's facility." *Id.* ¶ 16. This area would include thousands of residential households. *Id.* ¶ 18. Plaintiffs allege that this purported class meets the requirements of numerosity, commonality, typicality, class representation, and that class treatment is the superior method of available adjudication. *Id.* ¶¶ 16-29.

Plaintiffs filed their Complaint on November 8, 2024. (Docket.) Plaintiffs seek damages for private nuisance, public nuisance, and negligence. (Compl. ¶¶ 84-128.) Defendants Synagro and Jacobs filed their Motions to Dismiss on January 16, 2025, and Plaintiffs filed their Objections to both Motions on March 14, 2025. (Docket.) Defendants Synagro and Jacobs each filed a Reply Memorandum on March 28, 2025. *Id.* This Court held a hearing on May 30, 2025. *Id.*

II

Standard of Review

"'The sole function of a motion to dismiss is to test the sufficiency of the complaint.'" *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 542 (R.I. 2022) (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)). "'A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim.'" *Montaquila v. Flagstar Bank, FSB*, 288 A.3d 967, 971 (R.I. 2023) (quoting *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017)).[1]

[1] This Court stresses that the Rhode Island Supreme Court made clear its decision not to adopt the federal courts' plausibility standard. *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 21 (R.I. 2018) ("But this Court was clear in *Chhun* that it was not adopting the federal courts' recently 'altered' interpretation of the legal standard employed with respect to a Rule 12(b)(6) motion to dismiss."). "Rather, 'the pleading simply must provide the opposing party with fair and adequate

"A Rule 12(b)(6) motion 'does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint.'" *Ferreira v. Child and Family Services*, 222 A.3d 69, 75 (R.I. 2019) (quoting *Hyatt v. Village House Convalescent Home, Inc.*, 880 A.2d 821, 823-24 (R.I. 2005)). '"We thus are confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in [the] plaintiff's favor."' *Jenkins v. City of East Providence*, 293 A.3d 1267, 1270 (R.I. 2023) (quoting *Narragansett Electric Company v. Minardi*, 21 A.3d 274, 277 (R.I. 2011)).

III

Analysis

A. Public Nuisance, Count II

Defendants Synagro and Jacobs argue that the Plaintiffs did not adequately allege a public nuisance because they have not alleged a special harm of a kind different from that suffered by other members of the public. (Def. Synagro's Mem. in Supp. of its Mot. to Dismiss at 7 (Def. Synagro's Mem.); Def. Jacobs' Mem. in Supp. of its Mot. to Dismiss at 8 (Def. Jacobs' Mem.).) Both Defendants aver that Plaintiffs allege that the noxious odors have interfered with the use and enjoyment of their properties and diminished the market value of their properties. (Def. Synagro's Mem. at 7-8; Def. Jacobs' Mem. at 8-9.) However, Defendants explain that these injuries are common to all residents, thus no special harm has been alleged particular to the Plaintiffs. (Def. Synagro's Mem. at 8; Def. Jacobs' Mem. at 10.)

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notice of the type of claim being asserted.'" *Oliver v. Narragansett Bay Insurance Co.*, 205 A.3d 445, 451 (R.I. 2019) (quoting *Gardner v. Baird*, 871 A.2d 949, 953 (R.I. 2005). "Rule 8(a) of the Superior Court Rules of Civil Procedure requires that '[a] pleading which sets forth a claim for relief, . . . shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.'" *Rhode Island Mobile Sportsfishermen, Inc. v. Nope's Island Conservation Association, Inc.*, 59 A.3d 112, 119 (R.I. 2013) (quoting Super. R. Civ. P. 8(a)).

Plaintiffs counter that they allege interference with the public right to uncontaminated air that has also resulted in special damages: namely, the interference with the use and enjoyment of their land. (Pls.' Mem. in Opp'n to Def. Synagro's Mot. to Dismiss at 17 (Pls.' Mem. Synagro); Pls.' Mem. in Opp'n to Def. Jacobs' Mot. to Dismiss at 20 (Pls.' Mem. Jacobs).) Plaintiffs explain that members of the public outside the purported class definition have not suffered damages of the same kind, in the form of lost property values and the use and enjoyment of private property. (Pls.' Mem. Synagro at 18.) In addition, Plaintiffs look to a recently published federal opinion in the District of Rhode Island analyzing Rhode Island law, in which the plaintiff's odor nuisance class action had a legally valid claim for public nuisance. (Pls.' Mem. Jacobs at 20-21); *see also Agudelo v. Sprague Operating Resources, LLC*, 528 F. Supp. 3d 10, 14-15 (D.R.I. 2021) (holding that special harm related to noxious odors emanating from defendant's property was sufficient to survive a motion to dismiss, where odors affected plaintiffs' use and enjoyment of their private properties).

A public nuisance is defined as "an unreasonable interference with a right common to the general public." *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 447 (R.I. 2008) (internal quotation omitted). "[A] complaint for public nuisance minimally must allege: (1) an unreasonable interference; (2) with a right common to the general public; (3) by a person or people with control over the instrumentality alleged to have created the nuisance when the damage occurred; and (4) causation." *Id.* at 452-53. "Only private individuals who 'suffer[] special damage, distinct from that common to the public' may maintain an action for a public nuisance." *Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 957 (R.I. 1994) (quoting *Iafrate v. Ramsden*, 96 R.I. 216, 222, 190 A.2d 473, 476 (1963)).

A public right is more than the aggregate of private rights held by many individuals but is

instead a right to a public good. *Lead Industries Association, Inc.*, 951 A.2d at 448 (citing Restatement (Second) *Torts* § 821B, cmt. g (1979)). Since the fourteenth century, courts have used claims of public nuisance to protect rights common to the public, including '"roadway safety, *air and water pollution*, disorderly conduct, and public health…"' *Id.* at 444 (quoting Richard O. Faulk and John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 Mich. St. L. Rev. 941, 951 (2007)) (emphasis added). Rhode Island courts continue to hold that claims grounded in public rights to air are prima facie public nuisance claims: "A necessary element of public nuisance is an interference with a public right—those indivisible resources shared by the public at large, *such as air*, water, or public rights of way." *Lead Industries Association, Inc.*, 951 A.2d at 453 (emphasis added). "The term public right is reserved more appropriately for those indivisible resources shared by the public at large, *such as air*, water, or public rights of way." *Id.* (emphasis added). The Restatement, which our Supreme Court looks to for guidance on this issue,[2] adds that "*the spread of smoke, dust or fumes* over a considerable area filled with private residences may interfere also with the use of public streets or affect the health of so many persons as to involve the interests of the public at large." Restatement (Second) *Torts* § 821B, cmt. g (1979) (emphasis added).

The Court holds that the Plaintiffs adequately allege a public nuisance—that they allege a harm to the public and they allege a special harm suffered by the putative class members. Plaintiffs allege that noxious odors emitted into public spaces harm a public right. (Compl. ¶¶ 61, 103.) Specifically, they allege that Defendants interfered with the public right to uncontaminated air. *Id.*

[2] *See, e.g., Hydro-Manufacturing., Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 958 (R.I. 1994) ("To meet the 'special damage' requirement, the individual 'must have suffered harm of a kind different from that suffered by other members of the public *exercising the right common to the general public that was the subject of interference.*'" (emphasis in original) (quoting Restatement (Second) *Torts* § 821C(1) (1979)).

¶¶ 71-73, 102. Plaintiffs also allege that they, and the putative class members, suffer a special harm resulting from these odors entering the Plaintiffs' and putative class members' properties. *Id.* ¶¶ 62, 102. Namely, Plaintiffs allege that the Defendants' interference hinders the use and enjoyment of their land and diminishes their property values. *Id.* ¶¶ 71-73, 102. Therefore, the Plaintiffs adequately allege a harm to a public right and a special harm to themselves. *See Agudelo*, 528 F. Supp. 3d at 14-15.

Furthermore, "[w]hen [a] nuisance, in addition to interfering with the public right, also interferes with the use and enjoyment of the plaintiff's land, it is a private nuisance as well as a public one." Restatement (Second) *Torts* § 821C, cmt. e. The Restatement illustrates this point by providing an example of an individual who operates a house of prostitution, which is declared by a statute to be a nuisance. *Id.* Such a house interferes with the use and enjoyment of a neighbor's dwelling, so that neighbor may recover on the basis of either the private or the public nuisance. *Id.* Though a house of prostitution is distinguishable from odors, the interference with the use and enjoyment of a neighbor's dwelling is exactly the kind of nuisance that Plaintiffs allege in their Complaint. (Compl. ¶¶ 71-73.) Under Rhode Island law, interfering with the public right to air is the kind of interference needed to establish a public nuisance claim. *See Iafrate*, 96 R.I. at 221, 190 A.2d at 476; *Lead Industries Association, Inc.*, 951 A.2d at 453. Plaintiffs allege that the Defendants' interference with that public right to uncontaminated air caused special damages: namely, interference with the use and enjoyment by the Plaintiffs and putative class members of their land. (Compl. ¶¶ 71-73; 102-03.) Plaintiffs' claim therefore alleges both an interference with a public right and an interference with the use and enjoyment of their land. *See* Restatement (Second) *Torts* § 821C, cmt. e. As such, Plaintiffs establish a claim for public nuisance that survives a motion to dismiss.

Defendant Jacobs claims that this Court should not look to the District of Rhode Island's ruling in *Agudelo*, submitting that reliance upon it to satisfy the special damage requirement is "incorrect and not supported by Rhode Island law." (Def. Jacobs' Reply Mem. in Supp. of its Mot. to Dismiss at 7 (Def. Jacobs' Reply.).) However, the facts of *Agudelo* more closely resemble the facts of the present case than any case discussed by the Defendants. *See Agudelo*, 528 F. Supp. 3d at 11-15; *Aldrich v. Howard*, 7 R.I. 199, 199-214 (1862); *Bowden v. Lewis*, 13 R.I. 189, 189-192 (1881); *Steere v. Tucker*, 39 R.I. 531, 99 A. 583, 584-92 (1916). The plaintiffs in *Agudelo* alleged an interference with the use and enjoyment of private property and a negative impact on property value. *Agudelo*, 528 F. Supp. 3d at 14. The claim was related to the emission of "horrible, very unpleasant, and nasty" odors from the defendant's petroleum-storage terminal. *Id.* at 12. These odors led many individuals to file complaints with RIDEM, as seen in the present case. *Id.*; (Compl. ¶ 69). The defendant in *Agudelo* also faced actions from USEPA, similar to the present Defendants. *Agudelo*, 528 F. Supp. 3d at 12; (Compl. ¶ 69). The plaintiff in *Agudelo* further alleged that the odors caused her and her neighbors, the putative class members, to lose the value and enjoyment of their property. *Agudelo*, 528 F. Supp. 3d at 12. *Agudelo* aligned with the interpretation of Rhode Island courts and the Restatement that the spread of "fumes over a considerable area filled with private residences may interfere also with the use of the public streets or affect the health of so many persons as to involve the interests of the public at large." Restatement (Second) *Torts* § 821B, cmt. g); *see also Agudelo*, 528 F. Supp. 3d at 14-15 (holding that special harm related to noxious odors emanating from defendant's property sufficient to survive a motion to dismiss, where it affected plaintiffs' use and enjoyment of their private properties). This Court therefore

considers *Agudelo* far more relevant to the present case than the Defendants suggest.[3]

Defendants look to a handful of Rhode Island Supreme Court decisions to support their claim that the Plaintiffs fail to assert special damages required for a public nuisance claim. (Def. Synagro's Mem. at 7; Def. Jacobs' Mem. at 9; Def. Synagro's Reply Mem. in Supp. of its Mot. to Dismiss at 4-5 (Def. Synagro's Reply); Def. Jacobs' Reply at 7). The cases Defendants cite are procedurally and factually distinguishable from the present case. The Court will now analyze each of these cases in turn.

In *Aldrich*, the Rhode Island Supreme Court addressed whether a plaintiff maintained a right at common law to sue a defendant when that defendant also faced an indictment from the State for the same act brought at the instigation of the same plaintiff. *Aldrich*, 7 R.I. at 212-13. This case centered on the defendant's construction of a wooden building in violation of an act restricting the construction of such buildings within the City of Providence. *Id.* at 199. The plaintiff argued that the construction of the building increased the risk of fire to the plaintiff's dwelling house, stores, and hotel, while the defendant alleged no cause of action was raised as the special damage was remote or contingent. *Id.* at 213. The Rhode Island Supreme Court held that the damage was "present, actual, and directly consequent upon the defendant's violation of law." *Id.* In the present case, Plaintiffs' allegations that Defendants' actions resulted in violations of the Clean Air Act, violations of Rhode Island environmental regulations, and actions resulting in Notices of Noncompliance being issued by RIDEM are easily comparable to the violations of the

[3] The Court also notes the heightened pleading standard of plausible entitlement to relief for the United States District Court for the District of Rhode Island. *See Agudelo v. Sprague Operating Resources, LLC*, 528 F. Supp. 3d 10, 12-13 (D.R.I. 2021) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 559 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Given that the District of Rhode Island denied a motion to dismiss for similar facts to the present case even with a heightened pleading standard, this Court feels allowing the present case to survive a motion to dismiss is appropriate.

defendant in *Aldrich*. *Id.* at 213-14; (Compl. ¶ 69). Plaintiffs' and putative class members' loss of use and enjoyment of their properties and the diminution in property value resulting from noxious odors are present, actual, and, as alleged, directly consequent upon the Defendants' actions. *See Aldrich*, 7 R.I. at 213; (Compl. ¶¶ 69, 71-73).

In *Bowden*, when discussing whether a jury instruction on special damages was proper, the defendants asserted that the plaintiff's building, constructed in the Barrington River on plots leased to the plaintiff for oyster lots, lessened the value of their villa lots along the river. *Bowden*, 13 R.I. at 189-191. The defendants did not elaborate on *how* the building lessened the value of these lots, but regardless of the reason, the loss of a view resulting from this building was "purely a private matter, and the person who suffers the loss can have no right to abate the obstruction on account of it, unless he can show that the obstruction is, on account of it, a private as well as a public nuisance." *Id.* at 191; *see also* Restatement (Second) *Torts* § 821C, cmt. e ("When the nuisance, in addition to interfering with the public right, *also interferes with the use and enjoyment of the plaintiff's land*, it is a private nuisance *as well as a public one*.") (emphasis added). Additionally, insofar as the defendants claimed the building was a public nuisance because it restricted access to their villa lots from the river, no evidence suggested that they or any other person even attempted to go to or from the lots by water after the plaintiff constructed the building. *Bowden*, 13 R.I. at 192. In the present case, Plaintiffs and putative class members allege interference with a public right: a right to clean, uncontaminated air. (Compl. ¶¶ 99-101.)

In *Steere*, the case centered on whether the defendant's building encroached upon a public highway in Glocester. *Steere*, 39 R.I. at 531, 99 A. at 584. Earlier in the case, the defendant challenged the cause of action on the grounds that the plaintiff's complaint did not allege "any injury different in degree and kind from that suffered by the general public" and did not possess

an easement of light or air. *Id.* at 531, 99 A. at 584. The trial court held that the alleged encroachment covering a public highway was a satisfactory pleading and survived the defendant's demurrer. *Id.* The court addressed whether a motion for leave to reargue the cause, as well as a request to introduce further evidence as to actual pecuniary loss or damage to the plaintiff's property, could be granted. *Id.* at 531, 99 A. at 592. The plaintiff averred that this encroachment prevented the plaintiff from "obtaining the light and air which would naturally come to his" premises. *Id.* at 531, 99 A. at 584. However, the plaintiff, nor his witnesses, alleged any evidence that his property "ha[d] been injured in the slightest degree; there is nothing to show that any air or any light is cut off from his premises by reason of the alleged encroachment." *Id.* at 531, 99 A. at 588. In the present case, Plaintiffs allege that their right to clean uncontaminated and unpolluted air is violated by the odors from the Defendants' property. (Compl. ¶¶ 99-101.) Plaintiffs cite specific examples of this right being violated. *Id.* ¶ 69. Additionally, unlike plaintiffs in *Steere*, Plaintiffs in the present case provide allegations of special damages in the form of interference with the use and enjoyment of their land because of the noxious odors originating from the Defendants' Facility. *Id.* ¶ 73; *Steere*, 39 R.I. at 531, 99 A. at 584. As such, the present case is distinguishable from *Steere*. *See Steere*, 39 R.I. at 531, 99 A. at 588; (Compl. ¶ 69).

Both Defendants look to the *Wilkey* decisions, *Wilkey v. Wed Portsmouth One, LLC,* No. NC-2021-0352, 2022 WL 909052, at *1 (R.I. Super. Mar. 23, 2022) ("*Wilkey I*"); *Wilkey v. Wed Portsmouth One, LLC*, No. NC-2021-0352, 2022 WL 1768823, at *1 (R.I. Super., Newport County May 18, 2022) ("*Wilkey II*"), to support their claim that the Plaintiffs do not assert special damages, but the *Wilkey* decisions are distinguishable from the present case. *Wilkey I*, 2022 WL 909052 at **1; *Wilkey II*, 2022 WL 1768823, at *1. First, both *Wilkey* decisions found that the plaintiffs did not identify a right common to the public needed for a public nuisance claim. *Wilkey I*, 2022 WL

909052 at *7; *Wilkey II*, 2022 WL 1768823, at *2 (quoting *Lead Industries Association, Inc.*, 951 A.2d at 446-47). The court in *Wilkey I* noted that those plaintiffs' "claims are all related to enjoying their private homes and property, not any public place of accommodation or repose." *Wilkey I*, 2022 WL 909052, at *7. The court in *Wilkey II* discussed this issue further. *Wilkey II*, 2022 WL 1768823, at *2-*3. A public right was defined as "the right to a public good, such as an indivisible resource shared by the public at large, *like air*, water, or public rights-of-way." *Id.* at *2 (internal quotation omitted) (emphasis added). The court added that "[t]here is nothing in Plaintiffs' Complaint that alleges any *effect on the quality of air* or water." *Id.* (emphasis added). In the present case, Plaintiffs allege an effect on the quality of air. (Compl. ¶¶ 71-73; 102-03.)

Second, the *Wilkey* decisions are distinguishable because they found the plaintiffs did not define or establish any special damages. *Wilkey I*, 2022 WL 909052, at *7; *Wilkey II*, 2022 WL 1768823, at *2-*3. In *Wilkey I*, the court stated that "the [p]laintiffs cannot establish a special damage that is separate from any other individual's harm in the community, so, by default, they do not have a likelihood to succeed on the merits on a public nuisance claim." *Wilkey I*, 2022 WL 909052, at *7. As the court clarified in *Wilkey II*, the plaintiffs could not establish a special damage because they "neglected to articulate how [the alleged] harms were incurred *during* [*p*]*laintiffs' exercise of a public right[,]* not just their exercise of [their] private-property right[.]" *Wilkey II*, 2022 WL 1768823, at *3 (internal quotation omitted). The court in *Wilkey II* dismissed the plaintiffs' public nuisance claim because these damages, not grounded in the exercise of a public right, were "no different than damages that could be suffered by any of the homeowners in the general vicinity of the [at issue] wind turbine." *Id.* at *3. That is not the case here, where Plaintiffs' claim focuses on the impact noxious odors have on the quality of air in their community. (Compl. ¶¶ 61-63, 103.) Plaintiffs then allege both that the noxious fumes emitted by the Defendants

interferes with the lives, comfort, and convenience of the general community in the exercise of a common right to unpolluted air, and that these emissions result in special damages for the putative class members, namely the use and enjoyment of their land. *Id.* ¶¶ 102-03; *see Agudelo*, 528 F. Supp. 3d at 14-15 (finding that special harm sufficiently alleged when odors from defendants' property interfered with plaintiffs' use and enjoyment of their private properties). Therefore, Plaintiffs do not make conclusory allegations, and Plaintiffs articulate how these harms were incurred during their exercise of a public right – namely, access to clean air – which the plaintiffs in the *Wilkey* decisions failed to do. *Wilkey II*, 2022 WL 1768823, at *3; (Compl. ¶¶ 102-03).

Defendants' interpretation of the *Wilkey* decisions would also remove the "teeth" of public nuisance claims as a means for individuals to remedy the harms they suffer. *See* (Def. Synagro's Reply at 4-5; Def. Jacobs' Reply at 8); Restatement (Second) *Torts* § 821C, cmt. e (describing how a plaintiff may assert damages from interference with the use and enjoyment of their land as a public nuisance when the interference also interferes with a public right). No class action suit for damages could be brought forward, as, by definition, all putative class members suffer the same loss of use and enjoyment of their land when a defendant interferes with the *public right* to air. *See* Restatement (Second) *Torts* § 821C, cmt. e. Requiring plaintiffs to establish different damages and claims between themselves and putative class members would undermine the basis for a class action claim, as plaintiffs would be establishing a difference in the claims and defenses between themselves and other putative class members and, thereby, a *lack* of typicality. *See, e.g., Guadagno v. Hertz Corporation*, No. C.A. 79-398, 1983 WL 481447, at *2 (R.I. Super. Mar. 1, 1983) (holding that a plaintiff was typical of others similarly situated, as the "[p]laintiff's claims and defenses are typical of the class and questions of law and fact are common"). The public right, then, is not the right of the individual members of the public to use and enjoy their own private properties, as

Defendants' interpretation of *Wilkey* suggests, but the public's right to breathe clean, uncontaminated, and unpolluted air. *See* (Def. Synagro's Reply at 4-5; Def. Jacobs' Reply at 8); Restatement (Second) *Torts* § 821C, cmt. e; (Compl. ¶ 103). The special damages suffered, meanwhile, is the use and enjoyment of each individual's own private property that all putative class members face. *See* Restatement (Second) *Torts* § 821C, cmt. e; (Compl. ¶ 102).

For these reasons, the most crucial of which being that the Plaintiffs sufficiently allege special damages, this Court holds that the Plaintiffs adequately allege a public nuisance to survive a motion to dismiss.

B. Private Nuisance, Count I

Only Defendant Synagro's Memorandum provides a direct argument for why this Court should dismiss Plaintiffs' allegation of private nuisance. (Def. Synagro's Mem. at 9-11.) Defendant Synagro avers that they have no legal right to act beyond the parameters of their contract, and as such cannot terminate the cause of the injury—namely, the noxious odors emanating from their Incinerator. *Id.* at 11.[4] They argue further that because the City must approve new equipment and any material alterations in services to comply with applicable law, Defendant Synagro has no control over the instrumentality causing the alleged nuisance. *Id.*

Plaintiffs counter that "the reasonableness of an actor's conduct in a nuisance case is a question of fact based on all the attendant circumstances." (Pls.' Mem. Synagro at 21.) Plaintiffs stress that the facts as they allege should be deemed sufficient, as they give rise to any cause of

[4] Defendant Synagro utilizes the incorrect pleading standard of plausibility at this point in their memorandum, and this Court notes that "[a] motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim." *Montaquila v. Flagstar Bank, FSB*, 288 A.3d 967, 971 (R.I. 2023) (internal quotation omitted); (Def. Synagro's Mem. at 9).

action even when asserted without specificity. *Id.* at 21-22.

A claim for private nuisance arises from unreasonable use of one's property that materially interferes with a neighbor's physical comfort or use of real estate. *Silva v. Laverty*, 203 A.3d 473, 481 (R.I. 2019); *see also Weida v. Ferry*, 493 A.2d 824, 826 (R.I. 1985). "When the nuisance, in addition to interfering with the public right, also interferes with the use and enjoyment of the plaintiff's land, *it is a private nuisance* as well as a public one." Restatement (Second) *Torts* § 821C cmt. e (emphasis added). Plaintiffs submit allegations that noxious odors from Defendant Synagro's Incinerator diminishes Plaintiffs' and putative class members' property values and interferes with the use and enjoyment of Plaintiffs' and putative class members' land. (Compl. ¶¶ 61-65, 68.)

Defendant Synagro avers their conduct, namely compliance with their contract with the City, shields them from potential liability. (Def. Synagro's Mem. at 11.) However, this does not establish beyond a reasonable doubt that no possible facts can support the Plaintiffs' claim. For almost a century, Rhode Island courts consistently emphasized that "nuisance liability is distinguished from negligence liability because a nuisance claim is predicated upon an *unreasonable injury* rather than *unreasonable conduct*." *Weida*, 493 A.2d at 826 (emphasis added) (citing *Braun v. Iannotti*, 54 R.I. 469, 175 A. 656 (1934)). A plaintiff may recover under nuisance liability damages from a defendant whose conduct is nontortious in nature. *Id.* at 826-27 (citing *Wood v. Picillo*, 443 A.2d 1244, 1247 (R.I. 1982)). Furthermore, Plaintiffs do not allege that the noxious odors from Defendant Synagro's Incinerator originate because of Defendant Synagro's compliance with their contract. Rather, the Complaint specifically cites Defendant Synagro's *noncompliance* as the origin of the odors and avers that these odors would be mitigated had Defendant Synagro complied with the terms of their contract with the City. (Compl. ¶¶ 56-60, 69;

Pls.' Mem. Synagro at 24).

Defendant Synagro does not establish beyond a reasonable doubt that Plaintiffs are barred from any recovery under any set of conceivable facts that Plaintiffs may establish to support their claim. *See Montaquila*, 288 A.3d at 971. In fact, as alleged, Plaintiffs present a prima facie case of private nuisance. *See* Restatement (Second) *Torts* § 821C cmt. e. Plaintiffs allege that Defendants' operation of the Facility generates an unreasonable injury—an interference with the use and enjoyment of their land. (Compl. ¶¶ 102-03.) If, as Defendants argue, their compliance with their contract prevents them from making modifications, they may still be liable for a nuisance resulting from their nontortious conduct. *See Weida*, 493 A.2d at 826-27; (Def. Synagro's Mem. at 11). Defendants' nuisance interferes with a public right, as discussed, and interferes with the Plaintiffs' use and enjoyment of their private land, and therefore is actionable as a private nuisance as well as a public one. *See* Restatement (Second) *Torts* § 821C cmt. e. As such, this Court finds granting a motion to dismiss the count of private nuisance to be inappropriate.

C. Negligence, Count III

Defendants Synagro and Jacobs aver that Plaintiffs fail to adequately state a claim of negligence because they have not alleged any actual loss or damage. (Def. Synagro's Mem. at 4-5; Def. Jacobs' Mem. at 11-12.) Both Defendants posit that the Plaintiffs do not allege encroachment upon land, as Plaintiffs do not establish that the Defendants took possession of or detained their land. (Def. Synagro's Mem. at 5; Def Jacobs' Mem. at 11.) To rule otherwise, Defendant Synagro argues, would be to grant the Plaintiffs a windfall. (Def. Synagro's Mem. at 11-12); *see Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 106 (R.I. 2016). Finally, both Defendants argue that an invasion of odors onto Plaintiffs' properties does not constitute an encroachment as odors are intangible. (Def. Synagro's Mem. at 5; Def. Jacobs' Mem.

at 11.)

Plaintiffs counter that they state two types of losses: (1) interference with the use and enjoyment of property and (2) adverse impacts on property value. (Pls.' Mem. Synagro at 13; Pls.' Mem. Jacobs at 22). Plaintiffs characterize Defendants' use of *Newstone* as misconstrued and an attempt to establish a bright line test. (Pls.' Mem. Synagro at 15; Pls.' Mem. Jacobs at 24). Plaintiffs aver that the noxious odors constitute a physical encroachment onto their land, and that this kind of encroachment may be remedied under Rhode Island common law. (Pls.' Mem. Synagro at 14-15; Pls.' Mem. Jacobs at 24); *see Rose v. Standard Oil Co. of New York*, 56 R.I. 272, 185 A. 251, 254 (1936).

To establish a claim of negligence in Rhode Island, a plaintiff must prove "a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and an actual loss or damage." *Newstone*, 140 A.3d at 104 (internal quotation omitted). As Plaintiffs point out, Defendants do not dispute whether Plaintiffs have sufficiently alleged a duty owed, a breach of that duty, causation, or injury, meaning only the actual loss or damage is in question. (Pls.' Mem. Synagro at 13, n.11.) "[I]n certain circumstances involving an encroachment upon land, damages 'may include the difference in value of the land before and after the harm as well as damages for the loss of use of the land."' *Newstone*, 140 A.3d at 104 (quoting *Banville v. Brennan*, 84 A.3d 424, 433 (R.I. 2014)). According to the Restatement, damages for loss of use of land may be recovered by a landowner for an invasion of land "not amounting to a total destruction of [its] value." Restatement (Second) *Torts* § 929(1)(b) (1979).

Defendants' cited caselaw is once again distinguishable from the present case. Defendant Jacobs relies solely on caselaw outside of Rhode Island in its attempt to establish that noxious

odors do not qualify as encroachments due to their intangible and transient nature. (Def. Jacobs' Mem. at 11); *see Public Service Co. of Colorado v. Van Wyk,* 27 P.3d 377, 387-88 (Colo. 2001) (holding that intangible "noise, electric fields, and radiation" did not constitute "encroachment" and were instead an "intangible invasion" of property). However, our Supreme Court disagrees with Colorado's interpretation. In *Rose*, our Supreme Court distinguished a man lighting a fire on his land from a man producing large volumes of smoke from manufacturing operations on his land. *Rose*, 56 R.I. at 272, 185 A. at 254. If the smoke produced by manufacturing operations "render[s] residence on neighboring land so uncomfortable and unhealthful as to cause damage to its owner," even if the one producing such smoke "used all reasonable care to prevent the nuisance[,]" an individual may recover both for nuisance and for negligence. *Id.* at 272, 185 A. at 254. "If negligence by the defendant is in fact a part of the chain of causation, the cause of action *is one for damage from negligence* as well as from an actionable nuisance and it may be declared on in either way *or in both at once*." *Id.* at 272, 185 A. at 254 (emphasis added). Plaintiffs assert that emissions from Defendants' industrial processes generated the odor at the center of this case. (Compl. ¶¶ 61-63, 71-75.) Plaintiffs aver that negligence is part of the chain of causation: that Defendants' negligence has resulted in the emission of these noxious odors. *Id.* ¶¶ 68-70. Plaintiffs support this allegation with facts, citing Notices of Noncompliance, odor complaints, and complaints filed by the State and by USEPA against Defendants. *Id.* ¶ 69. Plaintiffs therefore allege negligence as from an actionable nuisance sufficient to survive a motion to dismiss. *See Rose*, 56 R.I. at 272, 185 A. at 254.

Defendants' reliance on *Newstone* is misplaced. First, *Newstone* involved a motion for summary judgment. *Newstone*, 140 A.3d at 102. Second, *Newstone* is distinguishable from the present case on factual grounds. Crucially, the plaintiff in *Newstone* "acknowledge[d] the absence

of actual economic loss" in the appeal. *Id.* at 103. There were no material facts in dispute in *Newstone* that suggested the plaintiff suffered an economic loss required to establish a claim of negligence. *Id.* at 104. The plaintiff only held the condominium units at the center of the case for sale, and therefore did not experience an interference with rightful occupancy of the property. *Id.* Additionally, no "real and lasting harm" was suffered by the condominium units, as the undisputed facts of the case firmly established that following the flooding, "the . . . units were fully restored at no cost to plaintiff and were sold at fair market value." *Id.* at 105. Meanwhile, Plaintiffs in the present case allege they, and all putative class members, suffered interference with the use and enjoyment of the properties which they occupy. (Compl. ¶¶ 3-4, 73-75, 126.) Plaintiffs aver they and all putative class members suffered a loss in property values which is presently ongoing. *Id.* ¶¶ 73-75. Damages for harm to land may include the difference in value of the land before and after the harm as well as damages for the loss of use of the land. *Banville*, 84 A.3d at 433 (citing Restatement (Second) *Torts* § 929 (1979)). The plaintiffs in *Banville* received compensation for damages for harm to land in the form of diminution in property. *Id.* at 432-33. Rhode Island courts do not view such compensation, therefore, as a "windfall." *See id.*; (Def. Synagro's Mem. at 11-12).

Plaintiffs argue Defendants' Facility generated the odors at the center of this case and that Defendants' negligence is part of the chain of causation. *See Rose*, 56 R.I. at 272, 185 A. at 254; (Compl. ¶¶ 61-63, 71-75). Therefore, Plaintiffs have sufficiently alleged damages to survive a motion to dismiss.

D. Class Certification

Defendants Synagro and Jacobs assert that the class allegations should be dismissed under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure and stricken under Rule 12(f). (Def.

Synagro's Mem. at 4; Def. Jacobs' Mem. at 5-8); *see* Super. R. Civ. P. 12(b)(6), (f). Defendants argue that courts outside of Rhode Island have refused to certify classes in environmental tort actions that allege claims based on odors. (Def. Synagro's Mem. at 11.) Defendants argue common questions of law and fact would remain as to the origin of the odors on each property, and therefore this Court should strike the class action allegations. (Def. Synagro's Mem. at 11; Def. Jacobs' Mem. at 5.)

Plaintiffs counter that whether a court certifies a given class is highly fact intensive and specific to a case's facts. (Pls.' Mem. Jacobs at 20.) Plaintiffs add they adequately allege each element of a class action claim. *Id.* at 16-26. Plaintiffs also look to federal precedent, where motions to strike class allegations are highly disfavored and should only be considered when class-wide allegations will obviously fail. *Id.* at 12; (Pls.' Mem. Synagro at 25).

Class certification requires plaintiffs to establish that "(1) '[t]he class is so numerous that joinder of all members is impracticable;' (2) '[t]here are questions of law or fact common to the class;' (3) '[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class;' and (4) '[t]he representative parties will fairly and adequately protect the interests of the class.'" *Clifford v. Raimondo*, 184 A.3d 673, 685 (R.I. 2018) (quoting Super. R. Civ. P. 23(a)). Under Rule 12(f), "the court may order stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter."

The Supreme Court of Rhode Island held that "where the Federal rule and our state rule are substantially similar, we will look to the Federal courts for guidance or interpretation of our own rule." *Heal v. Heal*, 762 A.2d 463, 466-67 (R.I. 2000). Looking to the First Circuit Court of Appeals, "[i]f it is obvious from the pleadings that the proceeding cannot possibly move forward on a classwide basis, district courts use their authority under Federal Rule of Civil Procedure 12(f)

to delete the complaint's class allegations." *Manning v. Boston Medical Center Corp.*, 725 F.3d 34, 59 (1st Cir. 2013). Striking class allegations "is even more disfavored because it requires a reviewing court to preemptively terminate the class aspects of . . . litigation, solely on the basis of what is alleged in the complaint, and before plaintiffs are permitted to complete the discovery to which they would otherwise be entitled on questions relevant to class certification." *Id.*

This Court holds that the Plaintiffs adequately allege a class action, and this Court will not prematurely discuss whether the class should be certified under Rule 23 of the Superior Court Rules of Civil Procedure. Plaintiffs allege that thousands of households reside within one mile of the Defendants' Facility – the proposed class definition. (Compl. ¶ 18.) Plaintiffs aver that numerous questions of law and fact will be shared among all parties, including whether the Defendants negligently, intentionally, recklessly, and/or willfully failed to operate their Facility, whether and to what extent Defendants' Facility caused noxious odors within the class area, and whether the degree of harm suffered by Plaintiffs and the class members constitutes a substantial interference with their private property rights, among others. *Id.* ¶ 19. Plaintiffs argue their claims are typical of those of putative class members: that damages have a common cause in Defendants' improper operation of the Facility, that injuries and harm were suffered by the putative class members and Plaintiffs as a result of the invasion of their private residences by noxious odors are similar, and that proving the claim of each individual class member, if brought individually, would require proof of many of the same material and substantive facts, utilize the same complex evidence and expert testimony, rely upon the same legal theories, and seek the same type of relief. *Id.* ¶¶ 20-22. Plaintiffs state that their counsel is highly experienced in complex class action litigation and that they will fairly and adequately represent the interests of the class. *Id.* ¶¶ 23-24.

Therefore, the Plaintiffs have adequately alleged the class action requirements at the

Motion to Dismiss phase, and it is not obvious from the pleadings that the proceeding cannot possibly move forward on a class-wide basis.

E. Leave to Amend Complaint

Defendant Jacobs states that Plaintiffs have sued the incorrect corporate entity, and the claims should instead be directed at CH2M Hill Engineers, Inc. (Def. Jacobs' Mem. at 12.) Plaintiffs state that they have "informally communicated to Jacobs' counsel that it will agree to amend the complaint to name CH2M Hill Engineers, Inc. ("CH2M") as a Defendant in Jacobs' place." (Pls.' Mem. Jacobs at 25.) The Court will grant leave to amend, if requested, to name the correct party.

IV

Conclusion

Based on the foregoing, Defendant Synagro's Motion to Dismiss is **DENIED**. Defendant Synagro's Motion to Strike Class Allegations is **DENIED**. Defendant Jacobs' Motion to Dismiss is **DENIED**. Plaintiffs' counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Doire, et al. v. Synagro Woonsocket, LLC, et al.**
CASE NO:	**PC-2024-06059**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**June 25, 2025**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Stephen E. Breggia, Esq.**
For Defendant:	**Michael J. Lepizzera, Jr., Esq.** **Michael R. Creta, Esq.** **Andrew R. McConville, Esq.** **Stephen T. Armato, Esq.** **Noel Y. Cho, Esq.**